STATE OF MICHIGAN

COURT OF APPEALS

LINDA MCCORMICK,

Plaintiff-Appellant,

v

HANOVER GROUP, INC, CITIZENS INSURANCE COMPANY OF AMERICA, CAROLE F. YOUNGBLOOD, and TAMARA WEBBER,

Defendants-Appellees.

UNPUBLISHED
May 15, 2012

No. 302011
Wayne Circuit Court
LC No. 10-003875-CZ

Before: K. F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals of right the trial court's dismissal of plaintiff's case against defendants Hanover Group, Inc. (Hanover), Citizens Insurance Company of America (Citizens), and Tamara Webber (Webber), the trial court's grant of summary disposition to defendant Carole F. Youngblood (Youngblood), and the denial of plaintiff's motion to amend her complaint. We reverse in part and affirm in part.

I. BASIC FACTS

This case presents a storied history of litigation, dating back to initial, related divorce proceedings between plaintiff's parents filed in 1976. We will not attempt to catalogue the history of the litigation, other than to note that (a) it is described in numerous published and unpublished opinions of this Court, the Michigan Supreme Court, and the United States Court of Appeals for the Sixth Circuit[1]; and (b) this Court previously has described the litigation as "replete with 'conduct and tactics which were, at times, less than admirable.'" *McCormick v Braverman*, unpublished opinion per curiam of the Court of Appeals, issued May 24, 2002 (Docket 222415), slip op at 1, quoting, *McCormick v McCormick*, unpublished opinion per

[1] See, e.g., *McCormick v McCormick*, 221 Mich App 672; 562 NW2d 504 (1997), *McCormick v Braverman*, 468 Mich 858; 657 NW2d 118 (2003), and *McCormick v Braverman*, 451 F.3d 382 (6th Cir 2006).

curiam of the Court of Appeals, issued September 9, 1991 (Docket 102806), slip op at 2. More than 20 years after that descriptor was penned, the litigation continues.

On March 31, 2010, plaintiff brought suit against Hanover, Citizens, and Webber, stating that plaintiff held an insurance policy with Hanover/Citizens[2], for whom defendant Webber worked as an adjuster, and alleging breach of contract, fraud, and conspiracy arising out of the defendants' actions in allegedly denying plaintiff insurance proceeds relating to a fire that occurred in the insured property (the Henry Ruff Property) on December 18, 2003. The Henry Ruff Property also apparently was the subject of the prior divorce and related quiet title litigation. In 2003, the Michigan Supreme Court affirmed a lower court finding that "the Henry Ruff Property was the sole property of [Edward McCormick's (plaintiff's father)] estate, subject to a life estate for [Mary McCormick (plaintiff's mother)], so long as Mary obeyed certain conditions, such as insuring the property in the name of Edward's estate." *McCormick v Braverman*, 451 F.3d 382, 387 (6th Cir 2006). After the fire in question, Judge Youngblood of the Wayne County Circuit Court appointed a receiver for the Henry Ruff Property and for the proceeds of the insurance policy for the Henry Ruff Property, although the policy was in plaintiff's name. *Id.*[3]

In addition to suing Hanover, Citizens and Webber in the 2010 litigation, plaintiff also sued Youngblood, alleging that Youngblood had improperly entered several orders in the divorce action in the absence of jurisdiction over the insurance proceeds or over plaintiff, improperly cancelled liens over which she had no jurisdiction, and entered orders libeling and defaming plaintiff. Plaintiff sought declaratory relief to correct the record and hold the allegedly illegal orders void *ab initio*.

On September 10, 2010, the trial court entered an order dismissing plaintiff's claims against Hanover, Citizens, and Webber, on the ground that a preliminary injunction entered by Youngblood in the divorce action precluded the filing of this suit against Hanover, Citizens, and Webber. The trial court denied those defendants' summary disposition motion to the extent it was premised on statute of limitations grounds, finding that there was insufficient evidence to determine that the claims were barred by the applicable statute(s) of limitations. On September 24, 2010, the trial court also granted summary disposition to Youngblood pursuant to MCR 2.116(C)(7) and MCR 2.116(C)(8), finding that Youngblood was entitled to absolute immunity, that plaintiff had failed to state a claim for which relief could be granted, and that amendment of the complaint would be futile. Plaintiff appeals.

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[2] The record reflects that Hanover is the parent company of Citizens.

[3] The record reflects that the trial court in the divorce proceedings ordered Citizens to pay to the appointed receiver the insurance proceeds regarding the Henry Ruff Property, and denied Citizens' motion to stay the payment of those proceeds. We do not address on this appeal the extent, if any, that this order may affect plaintiff's claims in this lawsuit, or defendants Hanover, Citizens, or Webber's obligations, if any, to plaintiff with respect to the insurance proceeds.

II. STANDARD OF REVIEW

This Court reviews de novo the trial court's ruling on a motion for summary disposition brought pursuant to MCR 2.116(C)(7). *Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 293 Mich App 66, 69; __ NW2d __ (2011). This Court "must consider all affidavits, pleadings, and other documentary evidence submitted by the parties." *Id.* "In reviewing a motion filed under this subrule, [we] accept[] plaintiffs' well-pleaded factual allegations as true and construe[] all the documentary evidence in plaintiffs' favor." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 10 n 8; 672 NW2d 351 (2003).

This Court reviews de novo the trial court's grant of summary disposition based upon a failure to state a claim. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). "We review for an abuse of discretion a circuit court's decision to grant or deny leave to amend a pleading; we will only reverse the court's ruling if it occasions an injustice." *Boylan v Fifty Eight LLC*, 289 Mich App 709, 727; 808 NW2d 277 (2010). "A court does not abuse its discretion if it selects an outcome falling within the range of reasonable and principled outcomes." *Id.*

III. HANOVER, CITIZENS, AND WEBBER'S MOTION FOR SUMMARY DISPOSITION[4]

A. PRELIMINARY INJUNCTION

Plaintiff contends that the trial court erred in dismissing her suit against Hanover, Citizens, and Webber because the preliminary injunction entered by Judge Youngblood in the divorce action did not enjoin plaintiff from filing suit against Hanover, Citizens, and Webber. On the record before us, we agree.

At the outset, this Court must note that it does not sanction the filing of frivolous and vexatious lawsuits, and that MCR 2.114 exists in part to address such filings. The Court recognizes that Judge Youngblood made a finding, in the related divorce action, that plaintiff had engaged in a "recognized pattern of repetitive, frivolous and vexatious conduct amounting to an abuse of the judicial process" including "filing numerous lawsuits found to be non-meritorious and over thirty-five appeals," and that such conduct was likely to continue. The Court further recognizes that the trial court below was faced with yet another court filing by plaintiff, including against the judge who had presided over the divorce action.

[4] Citing MCR 7.204(A)(1)(a), defendants Hanover, Citizens, and Webber initially contend that plaintiff's appeal of right (as it pertains to them) is untimely because it was not filed within 21 days after entry of the trial court's November 29, 2010 order denying plaintiff's motion for rehearing of the order dismissing her claims against them. However, the record reflects that trial court's final order in this action was a December 20, 2010 order denying plaintiff's motion for rehearing of an order granting summary disposition to defendant Youngblood. The record further reflects that this appeal was filed on January 7, 2011, less than 21 days after the entry of that final order. This appeal is therefore timely under MCR 7.203(A)(1).

We does not pass judgment on Judge Youngblood's determination in the divorce action, nor do we pass judgment on whether plaintiff's filing of this action in the trial court below may have violated MCR 2.114. However, all parties should be cognizant of the rule and the sanctions that may flow from its violation.

That being said, we are constrained on this appeal to assess not whether plaintiff's filing of this lawsuit violated MCR 2.114, but rather whether the filing of this lawsuit violated Judge Youngblood's preliminary injunction in the divorce action. Under the circumstances presented, we are unable to find that it did.

"MCR 2.116(C)(7) allows a trial court to grant summary disposition when a *claim* is barred by a prior judgment or disposition." *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 524; 773 NW2d 57 (2009) (emphasis in orig). The trial court found that the preliminary injunction applied to bar the filing of this lawsuit, given plaintiff's failure to first obtain leave from Judge Youngblood.[5]

As a preliminary matter, we note that preliminary injunctions are, by their very nature, "preliminary." That is, they are preliminary determinations that remain in effect only pending a determination on the merits, and that are subject to later being made permanent, or not. See *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 9; 753 NW2d 595, 600 (2008); *Psychological Services of Bloomfield, Inc v BCBSM*, 144 Mich App 182, 184-85; 375 NW2d 382, 383-84 (1985). In *Pontiac Fire Fighters Union Local 376*, our Supreme Court stated that "[g]iven the extraordinary nature of injunctive relief, our court rules contemplate expeditious resolution of the underlying claim or claims once a preliminary injunction issues." 482 Mich at 9. As MCR 3.310(A)(5) states:

> (5) If a preliminary injunction is granted, the court shall promptly schedule a pretrial conference. The trial of the action on the merits must be held within 6 months after the injunction is granted, unless good cause is shown or the parties stipulate to a longer period. The court shall issue its decision on the merits within 56 days after the trial is completed.

Id.

The record on appeal does not reflect whether the divorce action is concluded, whether (if the divorce action is concluded) the preliminary injunction continued in effect beyond the final disposition of the divorce action, or whether the preliminary injunction that was the basis for the trial court's summary disposition order was ever dissolved or made permanent. If the divorce

[5] The trial court denied the motion under MCR 2.116(C)(7) based on the statute of limitations, but dismissed the case based on the preliminary injunction. The trial court did not explicitly state that it was dismissing the case based on MCR 2.116(C)(7); however, Hanover, Citizens, and Webber's motion for summary disposition was brought pursuant to MCR 2.116(C)(7). Hanover, Citizens, and Webber cite MCR 2.116(C)(10) on appeal, but there is no indication that the trial court relied on MCR 2.116(C)(10).

action has been concluded, we would expect that the trial court in the divorce action would have either dissolved the preliminary injunction or made it permanent. See *Thelen v Ducharme*, 151 Mich App 441, 451; 390 NW2d 264, 268 (1986). This comports with the longstanding principle that "[t]he object of preliminary injunctions is to preserve the status quo, so that upon the final hearing the rights of the parties may be determined without injury to either." *Gates v Detroit & M Ry Co*, 151 Mich 548, 551; 115 NW 420 (1908). Regardless, in the absence of a further order continuing the preliminary injunction beyond the disposition of the divorce action (if it has concluded), the proscriptive effects of the preliminary injunction presumably would have ended with the termination of that proceeding. See *Niedzialek v Journeymen Barbers, Hairdressers & Cosmetologists' Intern Union of Am, Local No 552 (AFL)*, 331 Mich 296, 301-02; 49 NW2d 273, 276 (1951), quoting with approval *Goldfield Consol Mines Co v Goldfield Miners' Union Co 220*, 159 F 500, 511 (D Nev 1908) ("'An injunction *pendente lite* should not usurp the place of a final decree neither should it reach out any further than is absolutely necessary to protect the rights and property of the petitioner from injuries which are not only irreparable, but which must be expected before the suit can be heard on its merits.'"). Consequently, and irrespective of the scope of the preliminary injunction order (see discussion infra), we are unable to determine from the record before us whether the preliminary injunction continued to be in effect so as to preclude the filing of this suit.[6]

In addition, and even assuming that the preliminary injunction were still effective, we cannot on the record before us read it so broadly as to preclude the filing of this particular lawsuit. We do not pass judgment on whether a broader or more permanent injunction would be proper, but we are unable to find on the existing record that the particular injunction that was entered by Judge Youngblood in the divorce action, by its terms, precludes the filing of this lawsuit.

MCR 3.310(C) governs the scope of preliminary injunctions, and provides:

> (C) Form and Scope of Injunction. An order granting an injunction or restraining order.
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> (1) must set forth the reasons for its issuance;
>
> (2) must be specific in terms;
>
> (3) must describe in reasonable detail, and not by reference to the complaint or other document, the acts restrained; and
>
> (4) is binding only on the parties to the action, their officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

[6] The preliminary injunction was entered in the divorce action on January 20, 2006. The instant lawsuit was filed on March 31, 2010, over four years later.

A preliminary injunction "must be specific and narrowly construed." *Matter of Estate of Prichard*, 169 Mich App 140, 148; 425 NW2d 744 (1988), citing *Walters v Norlin*, 123 Mich App 435, 440; 332 NW2d 569 (1983). Here, the preliminary injunction at issue was entered by Judge Youngblood on January 20, 2006, in plaintiff's parents' divorce action.[7] The preliminary injunction grants the receiver's motion for a preliminary injunction enjoining plaintiff from filing suit without leave of the court.[8] It also states the enjoining court's finding that plaintiff had

> engaged in a recognized pattern of repetitive, frivolous and vexatious conduct amounting to an abuse of the judicial process by filing numerous lawsuits found to be non-meritorious and over thirty-five appeals relating to (a) the Property located at 8995 Henry Ruff Road, Livonia, Michigan with a legal description of: Lot 10, Smiley-Ringwald Subdivision, as recorded in Liber 77, Page 35 of Plats, Wayne County Records, (b) the actions of the Court Appointed Receiver, David Findling; and (c) the actions of the Personal Representative of the Defendant Estate of Edward McCormick, Eric Braverman.

The enjoining court further found that plaintiff was likely to continue this pattern of conduct with further vexatious litigation.

These findings are not clearly erroneous, *Internat'l Union, UAW v State*, 231 Mich App 549, 551; 587 NW2d 821 (1998), and in fact they may have supported the grant of an injunction precluding plaintiff from filing any lawsuits relating to or arising out of the subject property without first obtaining leave of the court.

However, and although the enjoining court did refer to the subject property in its findings, and as noted the findings may have supported a broader injunction, the injunction as entered specifically proscribes plaintiff, absent leave, only from filing suit against certain named parties, specifically, "David Findling, Eric Braverman, Alpha Title, Inc., and MRP Real Estate Investments, Inc., or any of their heirs, assignees, officers, agents, servants, employees, or

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[7] Plaintiff argues that she was not a party to the divorce action; however, the preliminary injunction lists plaintiff as a third party defendant. Plaintiff provides no factual support for her argument that she is erroneously listed as a party. A party may not merely announce its position and leave it to the Court to discover and rationalize the basis for its claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). The record before this Court indicates that plaintiff was a party to the action in which the injunction was issued.

[8] The receiver's motion for a preliminary injunction is not contained in the record on appeal. We note that the receiver's motion was granted in a paragraph of the order that does not appear to be constrained by the later paragraph that precluded the filing of suit against certain named parties only. However, because the record on appeal does not contain the receiver's motion in the divorce action, we are unable to determine whether, in granting that motion, the court granted relief that was different in any respect from that reflected in the balance of the preliminary injunction order.

attorneys."[9] It does not, by the plain language of its terms, prohibit plaintiff from bringing suit against any defendants in this case, nor does it broadly prohibit plaintiff from filing any lawsuit relating to the property. We thus are obliged to reject the trial court's conclusion that the injunction applies to "any lawsuits relating to the 8995 Henry Ruff Road, Livonia, Michigan." The trial court was not free, in the exercise of its discretion or by application of equitable principles, to read the injunction's proscription more broadly than its terms, e.g., to include suits against defendants Hanover, Citizens, and Webber. See *Norlin*, 123 Mich App at 439.

Based on the record before us, we therefore must conclude that the trial court erred in finding that the preliminary injunction applied to the instant lawsuit against Hanover, Citizens, and Webber. Plaintiff's lawsuit should not have been dismissed on this ground.

B. STATUTES OF LIMITATION

Defendants Hanover, Citizens, and Webber also contend that plaintiff's claims against them were barred by the applicable statutes of limitations. The trial court found insufficient evidence to determine whether the statute of limitations had been tolled, and denied without prejudice these defendants' motion for summary disposition on that ground. Plaintiff argues that Hanover, Citizens and Webber did not file a cross appeal. However, "[a] cross appeal [is] not necessary to urge an 'alternative ground for affirmance.'" *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994).

"Absent a disputed question of fact, the determination whether a cause of action is barred by the statute of limitations is a question of law reviewed de novo." *Fisher Sand & Gravel Co*, 293 Mich App at 69. Plaintiff brought claims for breach of contract, insurance fraud, and conspiracy. The statute of limitations for "actions to recover damages or sums due for breach of contract" is six years. MCL 600.5807(8). When a complaint alleges all the necessary elements of fraud, the statute of limitations of six years governs fraud actions. See *Kuebler v Equitable Life Assurance Society of the United States*, 219 Mich App 1, 6; 555 NW2d 496 (1996) (finding six year statute of limitations, found in MCL 600.5813, applied to fraud count).[10] The statute of limitations for conspiracy depends on the underlying conduct. See *Terlecki v Stewart*, 278 Mich App 644, 653; 754 NW2d 899 (2008) ("It follows that the conspiracy claim takes on the limitations period for the underlying wrong that was the object of the conspiracy."). It is not entirely clear what the "underlying wrong" was in this case. *Id.* However, if the underlying conduct was the fraud, then the statute of limitations for conspiracy would also be six years. See *id.*; *Kuebler*, 219 Mich App at 6.

Hanover, Citizens, and Webber claim that the alleged conduct occurred in 2003. Plaintiff claims that the breach of contract occurred on October 26, 2004, but that she did not become

[9] On the record before us, we are unable to determine that defendants Hanover, Citizens, or Webber properly fit within any of these descriptors.

[10] The issue is not before us on this appeal as to whether plaintiff has alleged the requisite elements of a fraud claim.

aware of it until 2005. Accepting at this juncture, as we must, plaintiff's "well-pleaded factual allegations as true," *Peterson Novelties, Inc*, 259 Mich App at 108, the first instance of wrong-doing by defendants occurred in "the summer of 2004," when Hanover/Citizens refused to pay plaintiff's contractor. "[A] claim accrues when the wrong is done." *Boyle v General Motors Corp*, 468 Mich 226, 231; 661 NW2d 557 (2003). "In the absence of disputed facts" the question of whether a claim is barred by the statute of limitations is a question of law for the trial judge; however, the facts are not undisputed or uncontroverted in this case. *Moll v Abbott Laboratories*, 444 Mich 1, 26; 506 NW2d 816 (1993). We conclude, as the trial court did, that the record is insufficient for us to state with confidence whether some or all of plaintiff's claims are barred by the applicable statutes of limitations, or whether any of the statutes of limitations were tolled by her filing of a lawsuit in federal court. Accordingly, in light of the sparseness of the record before it and the presence of disputed facts, we find no error in the trial court's denial of summary disposition to defendants on statute of limitations grounds. We remand for further consideration of that issue.

IV. YOUNGBLOOD'S MOTION FOR SUMMARY DISPOSITION

A. IMMUNITY

Plaintiff contends that the trial court erred in granting summary disposition under MCR 2.116(C)(7) because her well-pleaded facts showed that the exceptions to immunity applied. We disagree.

MCL 691.1407 provides for "[g]overnmental immunity from tort liability." MCL 691.1407(5) provides: "A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." In *Odom v Wayne Co*, 482 Mich 459, 479; 760 NW2d 217 (2008), the Michigan Supreme Court summarized the steps used "when a defendant raises the affirmative defense of individual governmental immunity." A court must:

> (1) Determine whether the individual is a judge, a legislator, or the highest-ranking appointed executive official at any level of government who is entitled to absolute immunity under MCL 691.1407(5).
>
> (2) If the individual is a lower-ranking governmental employee or official, determine whether the plaintiff pleaded an intentional or a negligent tort.
>
> (3) If the plaintiff pleaded a negligent tort, proceed under MCL 691.1407(2) and determine if the individual caused an injury or damage while acting in the course of employment or service or on behalf of his governmental employer and whether:
>
> (a) the individual was acting or reasonably believed that he was acting within the scope of his authority,
>
> (b) the governmental agency was engaged in the exercise or discharge of a governmental function, and

(c) the individual's conduct amounted to gross negligence that was the proximate cause of the injury or damage.

(4) If the plaintiff pleaded an intentional tort, determine whether the defendant established that he is entitled to individual governmental immunity . . . by showing the following:

(a) The acts were undertaken during the course of employment and the employee was acting, or reasonably believed that he was acting, within the scope of his authority,

(b) the acts were undertaken in good faith, or were not undertaken with malice, and

(c) the acts were discretionary, as opposed to ministerial. [*Odom*, 482 Mich at 479-480 (citation omitted).]

Under this analysis, judges are entitled to "absolute immunity" for acts within their judicial authority See *Id.* at 479. Plaintiff's argument that Youngblood's acts were not within the scope of her authority is without merit. When determining whether an action was taken a judge's judicial capacity, the relevant inquiry is not the act itself, but the "nature" and "function" of the act. *Mireles v Waco*, 502 US 9, 12; 112 S Ct 286; 116 L Ed 2d 9 (1991), quoting *Stump v Sparkman*, 435 US 349, 362; 98 S Ct 1099, 1108; 55 L Ed 2d 331 (1978). The entry of orders is a function performed by a judge, and plaintiff encountered Youngblood in her judicial capacity. Although plaintiff argues that she was erroneously added as a party to her parents' divorce, a judge "will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority." *Stump*, 435 US at 362; 98 S Ct at 1108.

Youngblood also claims she was entitled to immunity under MCL 691.1407(2). However, the analysis in *Odom* suggests that when the defendant is a judge, the analysis need not go any further than step one. See also *McLean v McElhaney*, 289 Mich App 592, 604 n 10; 798 NW2d 29 (2010). Similarly, because we find that the trial court correctly determined that Youngblood was entitled to absolute immunity, we need not address her assertion that plaintiff's claims against her were barred by applicable statutes of limitations.

B. FAILURE TO STATE A CLAIM AND RIGHT TO AMEND COMPLAINT

Plaintiff contends that the trial court erred in finding that plaintiff failed to state a claim and that she was not entitled to amend her complaint. We disagree.

This Court has stated that "summary disposition for failure to state a claim is appropriate where a plaintiff attempts to state a cause of action against a governmental entity entitled to immunity." *Richardson v Warren Consol Sch Dist*, 197 Mich App 697, 698 n 1, 698; 496 NW2d 380 (1992). Because Youngblood was entitled to absolute immunity, summary disposition pursuant to MCR 2.116(C)(8) was proper. See *Richardson*, 197 Mich App at 698 n 1.

MCR 2.116(I)(5) provides: "If the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by

MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." "An amendment, however, would not be justified if it would be futile." *Ormsby v Capital Welding, Inc*, 471 Mich 45, 53; 684 NW2d 320 (2004). This Court has explained:

> Except in limited circumstances, a "party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires." A court should freely grant the nonprevailing party leave to amend the pleadings unless the amendment would be futile or otherwise unjustified. Motions to amend a complaint should be denied only for particularized reasons, such as undue delay, bad faith, or dilatory motive on the part of the movant, a repeated failure to cure deficiencies in the pleadings, undue prejudice to the opposing party by virtue of allowing the amendment, or the futility of amendment. [*Boylan*, 289 Mich App at 727-728 (citations omitted).]

Youngblood's motion was based, in part, on MCR 2.116(C)(8). Therefore, plaintiff was entitled to amend her complaint unless amendment was not justified. See MCR 2.116(I)(5). The trial court did not allow plaintiff to amend her complaint because it found there was no way she could state a claim and, therefore, amendment would be futile. Additionally, the trial court stated that it would not grant leave to amend because Youngblood was entitled to immunity. Because Youngblood was entitled to immunity, amendment would have been futile. Therefore, amendment was not justified. See *Ormsby*, 471 Mich at 53. Accordingly, the trial court did not abuse its discretion in denying leave to amend. See *Boylan*, 289 Mich App at 727.

Plaintiff also claims that the trial court erred in denying her leave to amend her complaint because she was acting in propria persona. Plaintiff argues that "it is the courts [sic] duty to draft a short explanation of the deficiencies and allow the Appellant to amend her [c]omplaint[] before dismissing it." However, the United States Supreme Court decision cited by plaintiff, *Haines v Kerner*, 404 US 519, 520; 92 S Ct 594; 30 L Ed 2d 652 (1972), merely provides that "allegations of [a] pro se complaint" are held "to less stringent standards than formal pleadings drafted by lawyers." Although plaintiff's complaint may have been held to "less stringent standards," *id.*, the trial court was not required to grant leave to amend even where it determined that amendment would be futile.

Reversed in part, affirmed in part, and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Mark T. Boonstra